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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,528	03/29/2004	Walter Forrest Frantz	BOI - 0017US	1916

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EXAMINER

KING, ANITA M

ART UNIT PAPER NUMBER

3632

DATE MAILED: 05/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,528	Applicant(s) FRANTZ ET AL.	
	Examiner Anita M. King	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 12, 18-21 and 23-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10, 13-17 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/04, 3/14/05, & 10/11/05</u> | 6) <input type="checkbox"/> Other: _____ |

This is the third office action for application number 10/811,528, Non-Protruding Seat Track Apparatus and Methods, filed on March 29, 2004.

Election/Restrictions

Claims 6-9, 11, 12, 18-21, and 23-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 6, 2006.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "802". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 10, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the attachment assembly" in line 3. There is insufficient antecedent basis for this limitation in the claim.

There is an inconsistency between the language in claim 10 and the functionally recited language in claim 1, thereby making the scope of the claim unclear. The phrase in claim 1 clearly indicates that a subcombination is being claimed, e.g., "an elongated support having a support surface adapted to engage directly or indirectly with a lower surface of a floor panel...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a payload track comprising an elongated support," the floor panel being only functionally recited. This presents no problem as long as the body of the claim also refers to the floor panel functionally, such as, "for attachment to said floor panel."

The problem arises when the floor panel is positively recited within the body of the claim, such as, "wherein the engagement surface is co-planar with at least one of the lower surface of the floor panel..." cited in claim 10. There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the

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combination of a payload track and a floor panel are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the payload track or the payload track in combination with the floor panel.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the payload track alone or the combination of the payload track and the floor panel. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim 15 recites the limitation "the attachment assembly" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 10, 13-15, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,052,914 to Williams. Williams discloses a payload track (6)

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comprising: an elongated support having a support surface adapted to engage directly or indirectly with a lower surface (side surface below top surface of element 2, Fig. 6) of a floor panel (2), and an engagement surface (8) adapted to be coupled to the payload assembly, the engagement surface being at least one of flush with and recessed below the lower surface of the floor panel when the support surface is engaged with the lower surface; wherein the engagement surface has at least one of an engagement slot (10) and an attachment aperture (9) disposed therein; wherein the engagement surface has an engagement slot disposed therein, the engagement slot having a plurality of alternating holes and lands and being adapted to cooperatively engage an attachment assembly (12); wherein the engagement surface is co-planar with at least one of the lower surface of the floor panel and the support surface; a payload member (Fig.3) having at least one support member (12); and a floor assembly.

Claims 1, 4, 10, 13, 16, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,877,671 to Underwood et al., hereinafter, Underwood. Underwood discloses a payload track (32) adapted for use with a payload assembly, comprising: an elongated support having a support surface (43) adapted to engage directly or indirectly with a lower surface of a floor panel (12), and an engagement surface adapted to be coupled to the payload assembly, the engagement surface being at least one flush with and recessed below the lower surface of the floor panel when the support surface is engaged with the lower surface; wherein the elongated support comprises a first channel member having a first upper surface (24), a second channel member approximately parallel to and spaced apart from the first channel member, the

second channel member having a second upper surface (24, to left of element 16) approximately co-planar with the first upper surface, and an engagement member (extending from element 44) coupled between the first and second channel members, the engagement member including the engagement surface, the first and second upper surfaces adapted to engage the lower surface of the floor panel; wherein the engagement surface is co-planar with at least one of the lower surface of the floor panel and the support surface; a payload member (14) having at least one support member (16, 18, 20); and a floor assembly (10) including at least one floor panel.

Claims 1, 4, 10, 13, 16, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,302,358 to Emsters et al., hereinafter, Emsters. Emsters (Fig. 10) discloses a payload track adapted for use with a payload assembly, comprising: an elongated support having a support surface adapted to engage directly or indirectly with a lower surface of a floor panel (5), and an engagement surface adapted to be coupled to the payload assembly, the engagement surface being at least one flush with and recessed below the lower surface of the floor panel when the support surface is engaged with the lower surface; wherein the elongated support comprises a first channel (6, to left of Fig. 10) member having a first upper surface, a second channel member approximately parallel to and spaced apart from the first channel member, the second channel member (6, to right of Fig. 10) having a second upper surface approximately co-planar with the first upper surface, and an engagement member (24) coupled between the first and second channel members, the engagement member including the engagement surface, the first and second upper surfaces

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adapted to engage the lower surface of the floor panel; wherein the engagement surface is co-planar with at least one of the lower surface of the floor panel and the support surface; a payload member (7) having at least one support member; and a floor assembly including at least one floor panel (5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 5, 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Underwood in view of Williams. Underwood further discloses that the engagement surface has at least one of an engagement slot (34). Underwood discloses the claimed invention except for the limitations of an attachment apertures and a plurality of alternating holes and lands. Williams teaches that it is known to have a payload track having a elongated support comprising an engagement surface, wherein the engagement surface has at least one of an engagement slot and an attachment aperture disposed therein, and a plurality of alternating holes and lands. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the engagement surface in Underwood to have included the engagement surface as taught by Williams for the purpose of providing an interlocking means for interacting with and securing an attachment assembly in a desired position

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along the length of the elongated track to accommodate different arrangements of the payload assembly or to accommodated different sized payloads supported on the track.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 3,478,995 to Lautzenhiser et al.

U.S. Patent 4,062,298 to Welk

U.S. Patent 4,911,381 to Cannon et al.

U.S. Patent 5,083,727 to Pompei et al.

U.S. Patent 5,178,346 to Beroth

U.S. Patent 5,383,630 to Flatten

U.S. Patent 5,823,724 to Lee

U.S. Patent 5,871,318 to Dixon et al.

U.S. Patent 6,068,214 to Kook et al.

U.S. Patent 6,875,916 to Winkelbach et al.

Great Britain Publication 2,167,354 to Harper et al.


The above patents all disclose various types of cargo or payload assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

May 4, 2006